No. 05-983

IN THE

Supreme Court of the United States

JACOB WINKELMAN *et al.*, *Petitioners,*

v.

PARMA CITY SCHOOL DISTRICT, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

In our March 30, 2006, supplemental brief, we brought to this Court's attention the Cleveland Bar Association's investigation into whether petitioners Jeff and Sandee Winkelman (the "Winkelmans") engaged in the unauthorized practice of law ("UPL"), "because they chose to represent their child before the [Sixth Circuit] without being licensed attorneys." Supp. Br. at 2 (quoting Supp. Br. App. at 4a). We also brought to the Court's attention the Cleveland Bar Association's pending UPL complaint seeking both a $10,000 fine and reimbursement of costs and expenses against another set of non-lawyer parents – Mr. and Mrs. Brian J. Woods (the "Woodses") – who, like the Winkelmans, merely prosecuted their autistic son's IDEA cases *pro se* in federal court. *See id.* at 2-3. We argued that these developments "exacerbate[d] the need for this Court's prompt intervention." *Id.* at 4.

Having initially brought these issues to the Court's attention, we believe that it is our obligation to provide the Court an update on relevant recent developments. *See* Sup. Ct. R. 15.8. These developments confirm not only that the question presented requires this Court's prompt intervention, but that the Bar Association expressly agrees that this Court "should * * * resolve the unsettled state of the law in this important area of federal law * * * as soon as possible." *Infra* at 3 (citations omitted).

On April 20, 2006 – after respondent's BIO and our reply were filed – the Ohio Supreme Court ordered "the Cleveland Bar Association to show cause, through the production of evidence, within 20 days of the date of this order, why the complaint it has filed against [the Woodses] * * * should not be dismissed" because "[i]t appear[ed] to the court from the evidence presented that [they] ha[ve] not engaged in the unauthorized practice of law." *Cleveland Bar Ass'n v. Woods*, 109 Ohio St. 3d 1418 (2006) (order).

The *Cleveland Plain Dealer* responded to the order with two articles. The first reported generally on the status of the *Woods*

UPL case and the petition in this case.[1] *See* Patrick O'Donnell, *Bar Association Battles Parents; Says Couple Served as Lawyers*, PLAIN DEALER (Cleveland), Apr. 27, 2006, at B1, *available at* 2006 WLNR 7131552. The second – a staff editorial – criticized the Cleveland Bar Association for bringing the UPL complaint against the Woodses. Opinion, *Lawyers v. Parents*, PLAIN DEALER (Cleveland), May 2, 2006, at B8, *available at* 2006 WLNR 7517025. It also argued that a rule prohibiting parental *pro se* prosecution of an IDEA case in federal court "presumes an ideal world – one in which all parents have the resources to secure * * * representation – or at least a world in which ample numbers of lawyers are willing to work cases on a pro bono basis." *Id.*

Contrary to respondent's suggestion that low-cost lawyers, *pro bono* lawyers, or lawyers willing to take-on an IDEA case based on the *possibility* of a statutory fee award significantly mitigate the inability of families with disabled children to obtain counsel, *see* BIO at 17-18, the editorial observed that "agencies that provide these kind of legal services to families report having to turn away the overwhelming majority of requests because of a lack of resources."[2] *Id.* Finally, the editorial noted that this Court "has a chance to resolve th[e] judicial confusion" over the question presented by granting the petition here. *Id.*

On May 3, 2006, the Cleveland Bar Association announced that it will dismiss the UPL complaint against the Woodses. In

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[1] This was not the first newspaper article devoting significant attention to the petition and the important question presented. *See generally* Patrick O'Donnell, *Parents Seek Right To Argue Case in Court*, PLAIN DEALER (Cleveland), Dec. 25, 2005, at B5.

[2] The staff editorial's observations are consistent with the comprehensive data reported by the *amici* in this case. *See* Br. *Amici Curiae* Autism Soc'y of Am. *et al.* at 8-9; Br. *Amici Curiae* Council of Parent Attorneys & Advocates *et al.* at 9-11; *see also* Adam Liptak, *Nonlawyer Father Wins His Suit Over Education, and the Bar Is Upset*, N.Y. TIMES, May 6, 2005, at A8, *available at* 2006 WLNR 7774997 (reporting that the Winkelmans "simply could not afford a lawyer").

reference to this case, the Bar Association's president noted that "[t]he U.S. Supreme Court should first resolve the unsettled state of the law in this important area of federal law," Patrick O'Donnell, *Lawyers Group Drops Case Against Parents*, PLAIN DEALER (Cleveland), May 5, 2006, at B3, *available at* 2006 WLNR 7763338 (quoting P. Kelly Tompkins, President, Cleveland Bar Ass'n, and discussing this case); *see also* Liptak, *supra*, at A8 ("The association should not have considered filing the complaint, [Tompkins] said, until after the United States Supreme Court acted in a case it might decide to hear this month."). In a separate letter to the editor of the *Plain Dealer*, he urged this Court to do so "as soon as possible." P. Kelly Tompkins, Letter to the Editor, PLAIN DEALER (Cleveland), May 5, 2006, at B8, *available at* http://www.cleveland.com/search/index.ssf?/base/opinion/1146817879278 90.xml?oxlet&coll=2.

Nonetheless, the Bar Association maintains that it has a "technical legal basis" for bringing UPL charges against parents like the Woodses and Winkelmans, *id.*, and "refused to rule out the possibility of further action [against the Woodses] after the Supreme Court acted in the Winkelman case," Liptak, *supra*, at A8. Nor has the Bar Association made any promises to drop its investigation into the Winkelmans' alleged UPL. Accordingly, it is possible that the Bar Association may re-file its complaint against the Woodses and/or file a UPL complaint against the Winkelmans if this Court allows the decision below to stand (either by denying review or by granting review and affirming on the merits). For this reason, as the *New York Times* noted, the Bar Association has only "[s]ort of" "backed down." Liptak, *supra*, at A8.

Whatever the likelihood that a future UPL prosecution will be based on the decision below, the swell of recent public and media attention to the *Woods* case and to this case confirms the importance of the question presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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